

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Rulemaking to Amend Parts 1, 2, 21,
and 25 of the Commission's
Rules to Redesignate the 27.5-29.5 GHz
Frequency Band, to Reallocate the
29.5-30.0 GHz Frequency
Band, to Establish Rules and
Policies for Local Multipoint
Distribution Service and
for Fixed Satellite Service

CC Docket No. 92-297

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REPLY COMMENTS OF LORAL/QUALCOMM PARTNERSHIP, L.P.

Loral/QUALCOMM Partnership, L.P. ("LQP"), by its attorneys, hereby submits its reply comments with regard to the Commission's proposed redesignation of spectrum in the 27.5-29.5 GHz band, and reallocation of the 29.5-30.0 GHz band (Third Notice).¹ LQP previously submitted comments² and a letter to the Chairman³ regarding the issues raised by this proceeding. The comments in this proceeding confirm that the most expedient and rational course is for the Commission to defer any action until after the conclusion of the 1995 World

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¹ Third Notice of Proposed Rulemaking and Supplemental Tentative Decision, CC Docket No. 92-297, FCC 95-287, released July 28, 1995.

² Comments of Loral/Qualcomm Partnership, L.P. (filed August 28, 1995).

³ Letter to Hon. Reed E. Hundt dated September 7, 1995.

Radiocommunication Conference.⁴ To further that course, LQP recommends that the Commission establish now a schedule for filing supplemental, post WRC-95 comments, on how to take into consideration the outcome of WRC-95 in formulating a resolution to this rulemaking. Supplemental comments will enable the Commission to conclude this docket in the most expeditious manner and to consider all information that is relevant to resolving the spectrum allocations proposed in this docket. Deciding this docket without considering events at WRC-95 would result in a fatally flawed and ultimately unworkable decision.

I. The Commission Should Request and Consider Supplemental Comments on the NPRM After WRC-95

As the Commission noted in the NPRM, and as has been emphasized by numerous parties, the spectrum allocation issues the Commission must decide are dependent on the results of WRC-95.⁵ LQP demonstrated in its prior comments and letter that a swifter and more decisive resolution of this proceeding can be achieved if the Commission defers its decision until after the conclusion of WRC-95. Moreover, providing for supplemental comments will afford all parties the opportunity to address the WRC-95 results.

Establishing an expedited pleading schedule for filing supplemental comments after WRC-95 would provide an organized means of considering the impact of WRC-95 and, consequently, is in the public interest. Supplemental comments will provide a vital context in which to evaluate such issues as the basic spectrum plan, the plan's feasibility, as well as sharing and technical issues. It will also permit the Commission to revise its spectrum plan as needed in light of actual (not predicted) international spectrum allocations and timetables for the

⁴ See Comments of AirTouch at 2, Comments of GE Americom at 20, Comments of Hughes Communications Galaxy at 26. and Comments of TRW at 33.

⁵ NPRM at ¶ 66.

implementation of the allocations.

Deferral of final resolution of this docket is warranted even if a spectrum-sharing "solution" is developed and agreed to by certain interests in this proceeding based on the plan outlined in the NPRM. As LQP pointed out in its initial comments, the Commission has indicated that the Ka band spectrum would be used for NGSO MSS feeder links if C band spectrum is not made available at WRC-95.⁶ Any "solution" which does not accommodate all Big LEO systems' feeder links is inconsistent with the Commission's licensing of Big LEO systems. Consequently, the Commission must ascertain the extent to which U.S. Big LEO feeder link proposals succeed at WRC-95 prior to further action in this docket. Providing for expeditious filing of supplemental comments is the most appropriate method to ensure that all interests are considered in the context of the WRC-95 decisions.

II. Teledesic's Claim That an U.S. Allocation Must be Completed Before WRC-95 is Contrary to the Public Interest

Teledesic's suggestion that immediate Commission action in this docket is necessary in order to strengthen the United States position on allocation of the 28 GHz bands at WRC-95 should be rejected. Teledesic claims that "[f]ailure to adopt [the 28 GHz band] plan prior to WRC-95 *may be* interpreted internationally as a lack of support by the United States for NGSO satellite service and feeder link designations in the [Ka band]."⁷ It also claims that adoption of the allocation prior to WRC-95 "will increase the United States' ability at WRC-95 to secure similar

⁶ See In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936(1994) at ¶ 166.

⁷ Comments of Teledesic Corporation at 2-3.

commitment and allocation internationally.”⁸

What is notably missing from Teledesic’s arguments is any foundation or rationale for its assertions. No support is given for the bald assertion that a domestic allocation would improve the chances of securing an international allocation at WRC-95. In reality, Teledesic’s stance is more likely to *inhibit* an international allocation. The United States’ efforts to pursue international allocations at 28 GHz for both NGSO FSS and for NGSO MSS feeder links must be achieved by diplomacy and building consensus, not by unilateral actions as Teledesic suggests. A U.S. allocation made prior to WRC-95 is unlikely to sway any administrations or convince them of the wisdom of an allocation for NGSO FSS systems. More likely, presenting this allocation as a *fait accompli* at WRC-95 would be seen as a rebuke of the international process and an attempt to coerce other administrations into adopting the U.S. allocation.

The Commission needs to look no further than WARC-92 to see that the United States cannot expect that its proposals always will be adopted by the international community. The 2 GHz MSS allocation proposed by the U.S. at WARC-92 was not adopted by the conference. After WARC-92, the U.S. angered many administrations when, after pushing so vigorously for a 2 GHz MSS allocation, it reallocated part of the MSS bands for domestic PCS. The U.S. must now go back to the international community and justify the adjustment it seeks in the Radio Regulations because of its domestic decision regarding PCS. The U.S. still faces the adverse effect of these actions in the upcoming WRC. The approach Teledesic advocates ignores this history and the lessons which can be learned from it.

⁸ Id. at 24.

Teledesic's assertions also ignore the fact that the U.S. has a number of goals at WRC-95 apart from those associated with the 28 GHz band. Taking an intractable position on 28 GHz, as Teledesic suggests, could jeopardize the U.S. position with respect to other portions of the spectrum.⁹ The prioritization of U.S. goals at WRC-95 is a matter to be determined by the U.S. delegation, not by any individual private interest.¹⁰ Contrary to the assertions of Teledesic, it was the Commission that proposed locating all MSS feeder links in the 28 GHz band if other feeder link allocations were not obtained at WRC-95. If the Commission now adopts the proposed ruling in the Third Notice, and the United States fails to obtain sufficient C and Ku band feeder link allocations at WRC-95, the Commission will be faced with two separate orders that are in direct conflict. It would have licensed a Big LEO system in accordance with the rules in the Big LEO Report and Order, while taking action in the 28 GHz docket which would impair one or more of the three licensees from having the spectrum necessary to operate.

In addition, it should be noted that numerous sharing issues raised by the Third Notice remain unresolved. As evidenced by the comments, there is not yet agreement as to whether sharing is possible among NGSO MSS feeder links, between NGSO MSS feeder links and GSO FSS systems, between GSO FSS and

⁹ One such goal is, of course, to obtain sufficient feeder link allocations for big LEO satellite systems. See U.S. Proposals for WRC-95; In Re World Radiocommunication Conference, 78 R.R.2d 747 (1995) at ¶ 6.

¹⁰ In this regard it should be noted that Teledesic is not yet licensed. In fact, the filing cut-off for satellite systems operating in the 28 GHz band was only recently closed. In contrast, there are three Big LEO entities now licensed, two of which plan to use 28 GHz feeder links, as well as other Big LEO applicants which may require access to the 28 GHz band.

LMDS, and lastly, among separate NGSO FSS systems.¹¹ It appears that the parties do not agree that the sharing contemplated by the band segmentation plan will even be possible.¹² Taking a unilateral, inflexible position now and at WRC-95 in light of these open issues could impede their resolution and affect the ability of the United States to achieve its objectives at the conference, for Teledesic as well as other industries.

¹¹ See Comments of Motorola at 9 (sharing among NGSO MSS feeder links is not possible) and Comments of TRW at 13 (sharing is possible); Comments of Hughes Communications Galaxy at 12-18 (sharing among NGSO MSS feeder links and GSO FSS systems is not possible) and Comments of TRW at 23 (sharing is possible); Comments of NASA at 7 (sharing between GSO FSS and LMDS is not possible) and Comments of CellularVision at 4 (sharing is possible); and Comments of Teledesic Corporation at n.8 (sharing among NGSO MSS systems is probably not possible).

¹² See Comments of NASA at 1, Comments of TRW at 8, Comments of Hughes Communications Galaxy at 4.

III. Conclusion

For the foregoing reasons, as well as those discussed in LQP's Comments, the Commission should defer action in this proceeding until after WRC-95, schedule a date for filing supplemental comments on the outcome of WRC-95 and incorporate these supplemental comments in its final decision in this docket.

Respectfully submitted,

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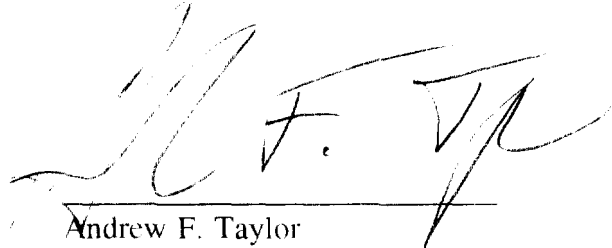
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